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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

COLUMBUS JOHNSON,

Defendant and Appellant.

B221384

(Los Angeles County
Super. Ct. No. GA072262)

APPEAL from a judgment of the Superior Court of Los Angeles County.
Candace J. Beason, Judge. Affirmed as modified.

Irma Castillo, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Pamela C. Hamanaka, Assistant Attorney General, Scott A. Taryle and Charles S. Lee, Deputy Attorneys General, for Plaintiff and Respondent.

Columbus Johnson appeals from the judgment after a jury convicted him of two counts of first degree burglary. He contends the trial court erred in denying his requests to represent himself and in failing to award him five additional days of presentence credit on his 80 years to life sentence. We affirm.¹

FACTS AND PROCEEDINGS BELOW

Because this is an unreported opinion and the parties are familiar with the facts we will dispense with their recitation here. To the extent they are relevant we discuss the facts in our resolution of the sole issue on appeal—whether the trial court erred in denying Johnson’s *Faretta* motion. (*Faretta v. California* (1975) 422 U.S. 806 (*Faretta*).)

DISCUSSION

Although defendants enjoy a constitutional right to represent themselves (*Faretta*, *supra*, 422 U.S. at p. 819) that right is not self-executing. Instead courts insist that “the defendant make a timely and unequivocal assertion of the right of self-representation” (*People v. Marshall* (1997) 15 Cal.4th 1, 21 (*Marshall*)) and “indulge every reasonable inference against waiver of the right to counsel.” (*Id.* at p. 20.) The People do not contend that Johnson’s requests to represent himself were untimely but that the requests were not unequivocal and, in any event, were properly denied based on Johnson’s disruptive behavior during pretrial proceedings. For the reasons discussed below, we conclude that Johnson failed to make an unequivocal request to waive counsel and represent himself.

A. Factual Background

Johnson’s first transcribed appearance occurred on July 17, 2008. At that hearing his counsel declared a doubt about Johnson’s competency to stand trial. After the court ordered a doctor’s report Johnson cut in asking: “Can I just kill myself and get it over with? I’m serious.” The court ignored Johnson’s remark. After the court and the

¹ The People agree Johnson is entitled to five additional days of custody credit. We will order the abstract of judgment modified to reflect this increase.

prosecutor discussed the need for a second doctor's opinion, Johnson interjected:
 "Trying to give me 75 to life for something I didn't do. Might as well go on and kill me."
 The court again ignored Johnson's comment.

Johnson appeared in court on October 8, 2008. The record does not contain a reporter's transcript of this proceeding. The court's minute order shows that the court granted counsel's request for additional time for the competency examination. The minute order also states: "Defendant is depressed. The court orders defendant be placed on suicide watch." The minute order does not reflect any disruptive behavior on Johnson's part.

Johnson first stated that he wanted to represent himself during the February 25, 2009 hearing on his competency to stand trial. The following colloquy occurred between the court, the bailiff and Johnson.

"The Defendant: Your honor, can I say something?

"The Bailiff: No.

"The Defendant: What do you mean 'No'?

"The Court: Hang on. Both sides are agreeing that the court can —

"The Defendant: Your honor, can I have the (inaudible) please because my (inaudible) is acting up and I can't go through this no more. I am going to take the deal and get it over with. 75 to life is 75 to life.

"The Court: Okay. We're going to have Mr. Johnson either be quiet or we will have him removed from the court."

After receiving that warning, Johnson made no further interruptions.

The court found Johnson competent to stand trial and the court and counsel for the parties discussed setting a pretrial conference date. The court asked Johnson if he agreed to the date the court suggested. This colloquy followed.

"The Defendant: I would like to defend myself.

"The Court: All right. I'll take that as a no.

"The Defendant: I would like to defend myself.

“The Court: April 27 is the last day. I’m going to set the matter March 11.

“The Defendant: Can I defend myself?

“The Court: I will give you some paperwork to fill out.” At the end of the hearing the court stated: “And let’s give Mr. Johnson the pro per petition before he leaves the building.”

The minute order from this hearing states: “Defendant’s request to proceed in propria persona is heard. The Sheriff’s Department is given the pro-per petition for the defendant to complete, however, due to the defendant’s mental state, they are no[t] able to turn over the necessary document.”

Johnson again raised the issue of self-representation at a trial setting conference on June 30, 2009. The court asked Johnson’s lawyer if Johnson would agree to waive time. Johnson responded to the question stating:

“Whatever you all want to do, that’s you all [sic] business. I ain’t got nothing to do with this. I already said what I had to say. You all don’t listen to me. I’m taking my own life, your honor. Why do you think they got me in this yellow shirt? Whatever you all want to do, that’s you all [sic] business. I’m fixin’ to save the taxpayers some money. I told you, I’m taking my own life. I ain’t fixin’ to give you all the pleasure.”

The court and counsel proceeded to discuss a trial date and when they were finished the court noted: “Mr. Johnson is in agreement.” This exchange between the court and Johnson followed.

“The Defendant: I ain’t agreed to nothing.

“The Court: Oh, I thought you just said whatever I want.

“The Defendant: I ain’t agreed to nothing.

“The Court: Okay. You don’t want to waive time?

“The Defendant: I ain’t agreed to nothing. I’m in a yellow shirt. I ain’t agreed to nothing. I wanted to go pro. per. You all ain’t agreed to that. I ain’t agreed to nothing. I ain’t even here. You all keep asking me all these old stupid-ass questions. I

ain't agreed to nothing. But when I get the death penalty, you gonna give me that. I told you, I don't care none about none of this.

"The Court: Has he requested pro. per. status before?

"The Defendant: You denied it. I can do better on my own.

"The Court: I don't recall us —

"[Defense Counsel]: I think he did ask for it, but —

"The Defendant: I asked for it three times.

"[Defense Counsel]: But I don't know if he filled out the form.

"The Clerk: Was this the one where we tried to give him the form?

"The court: Oh, yes. The court notes on 2/25 the defendant was requesting pro. per. status. The Sheriff's Department attempted to give him the pro. per. documentation, but they were not able to due to his mental state. So at this point —

"The Defendant: But you want me to plead 25 to life.

"The Court: Okay.

"The Defendant: See.

"The Court: Mr. Johnson, I need you to cooperate here.

"The Defendant: Can I take my own life then? Is that okay? Can we agree to that? Everybody else talking about everything else.

"The Court: Okay. Mr. Johnson, I'm going to trail the matter if you don't want to waive time. But given your frequent outbursts and your inability to abide by the rules, I'm not going to reconsider another pro. per. request."

B. Pro. Per. Advisement Form

Johnson argues that the court unreasonably interfered with his right to self-representation by requiring him to fill out a form before considering his request. The form is not in the record because Johnson never completed and returned it.² Nevertheless, it is fair to presume the form's purpose was to provide information and ask

² The record shows that due to Johnson's "mental state" following the hearing, the Sheriff's Department was not able to provide him with the form.

questions designed to make sure that the defendant's decision to forego the right to counsel was made "knowingly and voluntarily." (*People v. Taylor* (2009) 47 Cal.4th 850, 872.)³ Johnson does not explain how he was prejudiced by the court's use of a form as part of its decisionmaking process in response to a *Faretta* motion.

C. Disruption of Proceedings

Johnson next argues that the court erred in denying his request for self-representation based on his "frequent outbursts" and "inability to abide by the rules."

A court is only justified in denying self-representation based on courtroom conduct if that conduct involves "deliberate, serious misconduct" (*Marshall, supra*, 15 Cal.4th at p. 20) "that seriously threatens the core integrity of the trial" (*People v. Carson* (2005) 35 Cal.4th 1, 6). Johnson points out that in his 16 court appearances reflected in the record there are only three instances of what might be deemed "outbursts" and these were far from the kind of serious misconduct that could threaten the "core integrity" of the trial. He also disputes the court's accusation of his "inability to abide by the rules." Other than the few instances of speaking out of turn, Johnson claims the record does not show any violation of the court's rules.

We agree with Johnson that his conduct at the court hearings was not so disruptive as to justify denying his request for self-representation. That conclusion, however, does not compel reversal of the judgment because even though the trial court denied the request for an improper reason, if the record as a whole establishes the defendant's request was properly denied on other grounds we uphold the trial court's ruling. (*People v. Dent* (2003) 30 Cal.4th 213, 218.) Thus, we must still determine the separate issue of whether Johnson unequivocally invoked his right to self-representation. (*Marshall, supra*, 15 Cal.4th at p. 24.)

³ In *People v. Blair* (2005) 36 Cal.4th 686, 709, the court described the "Los Angeles County Superior Court's in propria persona advisement form . . . as 'a means by which the judge and the defendant seeking self-representation may have a meaningful dialogue concerning the dangers and responsibilities of self-representation.'"

D. Equivocal Request For Self-Representation

A request for self-representation is not unequivocal just because the defendant says, as Johnson did, “I would like to defend myself.” (Cf. *Marshall*, *supra*, 15 Cal.4th at pp. 18, 25 [“I will take the pro per status,” not unequivocal waiver of counsel under totality of the circumstances].) Rather, the court must determine “whether the defendant truly desires to represent himself or herself.” (*Id.* at p. 23.) In determining whether a request for self-representation is unequivocal, we are not bound by the trial court’s apparent understanding that the defendant was making a request to defend himself; we consider the purported request in light of the record as a whole. (*People v. Barnett* (1998) 17 Cal.4th 1044, 1087.)

As explained in *Marshall*: “The court faced with a motion for self-representation should evaluate not only whether the defendant has stated the motion clearly, but also the defendant’s conduct and other words. Because the court should draw every reasonable inference against waiver of the right to counsel, the defendant’s conduct or words reflecting ambivalence about self-representation may support the court’s decision to deny the defendant’s motion.” (*Marshall*, *supra*, 15 Cal.4th at p. 23.) Factors to consider include whether the defendant made the request for self-representation “in passing anger or frustration,” “under the cloud of emotion,” or as the result of a “momentary caprice” or of “thinking out loud.” (*Id.* at pp. 23, 21.)

From our review of the record, we conclude that Johnson’s purported requests to represent himself were not born out of a “true desire” to proceed in pro. per. but out of depression and a sense of frustration over the delays in the trial proceedings.

For example, at an October 2008 hearing the court made a factual finding that “[d]efendant is depressed” and ordered him placed on a suicide watch at the jail. Johnson’s depression manifested itself at subsequent proceedings. At the February 25 hearing, where Johnson first brought up self-representation, Johnson told the court: “I can’t go through this no more. I am going to take the deal and get it over with. 75 to life is 75 to life.” Before raising the issue of going pro. per. at the June 30 hearing Johnson

told the court, “I’m taking my own life, your honor. . . . I’m fixin’ to save the taxpayers some money. I told you, I’m taking my own life. I ain’t fixin’ to give you all the pleasure.”

The record also reflects Johnson’s allusions to self-representation were sandwiched between his expressions of frustration at the repeated continuances of his trial and his impression that he was being ignored by the court and his counsel. Johnson’s first mention of self-representation occurred at the February 25 hearing on his competency to stand trial. His request to address the court was denied but he interjected “I can’t go through this no more” and stated he wanted to accept a plea bargain. In response to the court’s question whether he waived time for trial Johnson stated: “I would like to defend myself.” At the June 30 hearing Johnson appeared even more frustrated with the proceedings. When the court asked Johnson if he agreed to waive time for trial Johnson replied:

“Whatever you all want to do, that’s you all [sic] business. I ain’t got nothing to do with this. I already said what I had to say. You all don’t listen to me. . . . Whatever you all want to do, that’s you all [sic] business. . . . [¶] . . . [¶] I ain’t agreed to nothing. . . . I ain’t agreed to nothing. I wanted to go pro. per. You all ain’t agreed to that. I ain’t agreed to nothing. I ain’t even here. You all keep asking me all these old stupid-ass questions. I ain’t agreed to nothing. But when I get the death penalty, you gonna give me that. I told you, I don’t care none about none of this.”

Johnson’s statement—“I wanted to go pro. per. [but you] ain’t agreed to that”—could be construed as the abandonment of any desire for self-representation. (*People v. Kenner* (1990) 223 Cal.App.3d 56, 62 [“defendant’s conduct may indicate an abandonment of withdrawal of a request for a *Faretta* hearing”].) Even if viewed as a renewed request for self-representation we conclude that the request was born out of Johnson’s frustration with the slow progress of the judicial process and not out of a genuine desire to act as his own counsel.

DISPOSITION

The sentence is modified to grant defendant five additional days of presentence credit and the cause is remanded to the trial court with directions to prepare an amended abstract of judgment and to forward a copy thereof to the Department of Corrections and Rehabilitation. In all other respects the judgment is affirmed.

NOT TO BE PUBLISHED.

ROTHSCHILD, J.

We concur:

MALLANO, P. J.

CHANEY, J.